



Senate

General Assembly

February Session, 2014

File No. 190

Senate Bill No. 208

Senate, March 31, 2014

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING PHARMACY REWARDS PROGRAMS AND PROTECTED HEALTH INFORMATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2014*) (a) For purposes of this
2 section, "pharmacy rewards program" means a promotional
3 arrangement under which a retailer provides a consumer with store
4 credits, discounts or other tangible benefits in exchange for the
5 consumer filling drug prescriptions through such retailer or its
6 affiliate.

7 (b) Prior to enrolling a consumer in a pharmacy rewards program, a
8 retailer shall provide the consumer with a plain language summary of
9 the terms and conditions of such program. Such summary shall be in
10 writing and shall include, if a HIPAA authorization is required to
11 participate in the program, a disclosure statement that contains
12 conspicuous notice, in bold font, of what a HIPAA authorization is and
13 that explains that, once a HIPAA authorization is signed, the
14 consumer's personal health information may no longer be protected by

15 federal and state privacy laws.

16 (c) If the consumer is required to sign a HIPAA authorization to
17 participate in the program, the retailer shall include information on the
18 enrollment form, at the point of HIPAA authorization, that states: (1)
19 The specific uses or disclosures the HIPAA authorization allows, (2)
20 whether personal health information obtained by the retailer will be
21 disclosed to third parties and, if so disclosed, shall include a disclosure
22 statement that such information will not be protected by federal or
23 state privacy laws, (3) which, if any, third parties will have access to
24 the consumer's protected health information, (4) instructions on how to
25 revoke the authorization, and (5) that the consumer is entitled to a
26 copy of the authorization once signed.

27 (d) The terms "HIPAA", "Health Insurance Portability and
28 Accountability Act of 1996", "HIPAA authorization", "personal health
29 information", "Privacy Rule", "privacy law" and "marketing purposes"
30 shall be defined in promotional materials, in the summary required
31 pursuant to subsection (b) of this section, and on the enrollment form
32 at the point of HIPAA authorization, if such terms are used in such
33 materials, summary or enrollment form.

34 (e) A violation of subsection (b), (c) or (d) of this section shall be
35 deemed an unfair or deceptive act or practice in the conduct of trade or
36 commerce under subsection (a) of section 42-110b of the general
37 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2014	New section

GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact to the state as the Department of Consumer Protection currently acts upon pharmacy related complaints and few additional complaints are anticipated as a result of the bill. It is anticipated that any additional complaints will result in solutions which will not lead to fines.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 208*****AN ACT CONCERNING PHARMACY REWARDS PROGRAMS AND PROTECTED HEALTH INFORMATION.*****SUMMARY:**

This bill requires retailers to give consumers a written, plain-language summary of the terms and conditions of pharmacy rewards programs before enrolling consumers in the programs. It requires additional disclosures in the summary and the rewards program enrollment form, if the consumer must sign a Health Insurance Portability and Accountability Act (HIPAA) authorization to participate in the program (see BACKGROUND).

Under the bill, a “pharmacy rewards program” is a promotional arrangement where a retailer gives a consumer store credits, discounts, or other tangible benefits in exchange for the consumer filling prescriptions through the retailer or its affiliate.

A violation of the bill’s requirements is an unfair or deceptive trade practice under the Connecticut Fair Trade Practices Act (CUTPA).

EFFECTIVE DATE: July 1, 2014

HIPAA AUTHORIZATION DISCLOSURES***Terms and Conditions***

Under the bill, if a HIPAA authorization is required to participate in a pharmacy rewards program, the plain-language summary describing its terms and conditions must include a disclosure statement (1) describing what a HIPAA authorization is and (2) explaining that once an authorization is signed, the consumer’s personal health information may not be protected under state and federal privacy laws. This

statement must be conspicuous and in bold font.

Enrollment Form

The bill also requires retailers that make consumers sign a HIPAA authorization to participate in their pharmacy rewards programs to include the following information on their enrollment forms:

1. the specific uses or disclosures allowed by the authorization;
2. whether personal health information the retailer obtains will be disclosed to third parties and, if so, that the information will not be protected by privacy laws;
3. which third parties will have access to the health information;
4. how to revoke the authorization; and
5. that the consumer is entitled to a copy of the signed authorization.

This information must be provided at the point of HIPAA authorization. (Presumably, this is where the consumer signs his or her name).

Federal law already requires authorizations to include such things as a description of protected health information that will be used and disclosed, the people allowed to make the use or disclosure, and the parties who may receive the information (45 CFR 160 and 164).

Relevant Terms

The bill requires certain terms, if they are used, to be defined in promotional materials, the plain-language summary, and the enrollment form at the point of HIPAA authorization. The terms included are:

1. HIPAA,
2. Health Insurance Portability and Accountability Act of 1996,

3. HIPAA authorization,
4. personal health information,
5. Privacy Rule,
6. privacy law, and
7. marketing purposes.

BACKGROUND

HIPAA

The HIPAA “privacy rule” sets national standards to protect the privacy of health information. It protects individually identifiable health information by defining and limiting the circumstances under which covered entities may use or disclose such information.

Connecticut Unfair Trade Practices Act (CUTPA)

CUTPA prohibits unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney’s fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2014)